

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

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4 **CAVENDISH FARMS OPERATIONS,**
5 **INC.,**

6 **Plaintiff,**

7 **v.**

8 **PUERTO NUEVO COLD STORAGE,**
9 **INC.,**

Defendant.

Civil No. 09-1289 (GAG)

10 **OPINION AND ORDER**

11 On March 30, 2009, the court entered judgment dismissing the case pursuant to the
12 settlement agreement entered into by the parties. (Docket No. 6.) Since that time, Plaintiff has tried
13 unsuccessfully to satisfy this judgment. Plaintiff sought, and the Clerk of Court signed, two
14 subpoenas *duces tecum*, seeking the testimony of Hugo Cabrera Perez (“Cabrera”) and Puerto Nuevo
15 Cold Storage, Inc. (“D&C Produce”). (Docket Nos. 47-2 & 47-3.) These parties moved to quash
16 the subpoenas (Docket No. 47) and Plaintiff opposed (Docket No. 49). The court referred the matter
17 to Magistrate Judge Silvia Carreno-Coll, who issued a Memorandum and Order denying the motion
18 to quash. (Docket No. 51.) Presently, Carbrera and D&C Produce seek review of Magistrate Judge
19 Carreno-Coll’s order pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(a). For the following reasons,
20 the court **DENIES** Cabrera and D&C Produce’s motion to issue a protective order and quash the
21 subpoenas at Docket No. 54.

22 **I. Discussion**

23 Cabrera and D&C Produce object to the Magistrate Judge’s Memorandum and Order mainly
24 due to the scope of the subpoenas, that they are not reasonably calculated to assist in collecting the
25 judgment, D&C Produce is not a successor in interest and no federal or state law supports the
26 subpoenas.

27 **A. Scope and Merit of the Subpoenas**

28 While the breadth of the subpoenas may seem broad, the information is necessary and

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1 reasonably calculated to determine whether successor liability doctrine applies. Both the underlying
2 Memorandum and Order and Plaintiff's memorandum cite and explain why Devine & Devine Food
3 Brokers, Inc. v. Wampler Foods, Inc., applies. 313 F.3d 616, 618 (1st Cir. 2002). These criteria
4 require fairly sophisticated financial information. Without this information, the court has no ability
5 to evaluate Plaintiff's claim. The scope of the subpoena and the underlying information requested
6 are reasonably calculated to ascertain whether the successor liability doctrine applies.

7 **B. Whether D&C Produce is a Successor**

8 Cabrera and D&C Produce repeat ad nauseam that they are not defendants to this action and
9 that D&C Produce is not a successor in interest of PNCS. However, the point of the subpoenas is
10 to ascertain whether these parties are successors in interest. Plaintiff makes sufficient allegations
11 that, if proven, may lead to the conclusion that D&C Produce is the successor in interest of PNCS.
12 Therefore, without this information, the court is unable to make this determination.

13 However, the court is mindful of the fact that these parties are not defendants and steps
14 should be taken to ensure the discovered information remains confidential. Therefore, in affirming
15 Magistrate Judge Carreno-Coll's order, the court additionally requires Plaintiff to sign a
16 confidentiality agreement generally stating that any information discovered through these subpoenas
17 will not be used for any purposes outside of this litigation.

18 **C. No Federal or State Law supports the Use of These Subpoenas**

19 The final two arguments are quickly disposed of as well. First, the parties only cite
20 untranslated case law from the Puerto Rico Supreme Court in support of the proposition that Puerto
21 Rico law does not support these subpoenas. (See Docket No. 54 at 11 (citing General Electric Credit
22 and Leasing Corp. of P.R., Inc. v. Concessionaires, Inc., 118 D.P.R. 32 (1986)). The court cannot
23 rely on untranslated materials. See Puerto Ricans For Puerto Rico Party v. Dalmau, 544 F.3d 58,
24 67 (1st Cir. 2008). Further, the parties do not cite any materials to support their contention that local
25 law, rather than federal law, applies.

26 Federal law does support the use of subpoenas. See FED. R. CIV. P. 45. The only question
27 is whether they should be used under these circumstances. The court finds the subpoenas proper
28 under these circumstances to discern whether successor of interest doctrine applies. Additionally,

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1 the court believes the confidentiality provision will safeguard against any improper and
2 impermissible disclosure of this confidential information, thereby lessening the potential risk for
3 these parties.

4 **II. Conclusion**

5 For the reasons set forth above, the court **DENIES** Cabrera and D&C Produce's motion
6 to quash at Docket No. 54. Magistrate Judge Carreno-Coll's order is hereby **AFFIRMED** with
7 the only alteration being the inclusion of a confidentiality agreement. Judge Carreno-Coll shall
8 issue any further necessary directives as to this matter.

9
10 **SO ORDERED.**

11 In San Juan, Puerto Rico this 16th day of October, 2013.

12 *S/Gustavo A. Gelpí*

13 GUSTAVO A. GELPÍ

14 United States District Judge
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